HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.16862 of 1996

Between:

Gade Jogi Reddy …Petitioner.

AND

Commissioner, Survey, Settlement &
Land Records, Andhra Pradesh, Hyderabad
& others. …Respondents.

:: O R D E R ::

Counsel for the Petitioner : Sri K. Sudeep Reddy,
Advocate

representing Sri K.Raghuveer
Reddy

Counsel for the Respondents : Government Pleader
for Revenue

21st JUNE 2006

Rules of natural justice are multifaceted and multi-demensional. Their application vary from case to case. No straightjacket formula has so far been evolved nor deserves to be evolved for invoking the rules of natural justice. One of the rules which has been recognised since time immemorial and frequently applied by the Courts for invalidation of judicial and quasi judicial orders and even administrative actions is the rule of audi alteram partem i.e., no man can be condemned unheard. Whenever a complaint is made by a person that he has been denied opportunity of hearing, the Court is required to consider the factual matrix of the case and then decide whether the action complained against is violative of the rule of hearing and whether

violation of this facet of natural justice has resulted in prejudice.

The question whether the rule of audi alteram partem is applicable to purely administrative actions and decisions of the public authorities which affect the rights of others is no longer res integra and must be answered in affirmative in view of the judgments of the Supreme Court in **State of Orissa v. Binapani Dei**[1], **Sayeedur Rahman v. State of Bihar**[2], **Maneka Gandhi v. Union of India**[3], **S.L. Kapoor v. Jagmohan**[4], **Swadeshi Cotton Mills v. Union of India**[5], **Olga Tellis v. Bombay Municipal Corporation**[6].

In **Dr. Binapani Dei's** case, the Supreme Court examined the correctness of an order passed by the Orissa High Court, which had quashed the retirement of the respondent on the ground of violation of the rules of natural justice. That facts of that case show that on the basis of some enquiry got conducted by it at the back of the respondent, the State Government retired her on the basis of deemed date of birth in contrast to the recorded date of birth. The High Court held that the State Government could not have retired the respondent on the basis of the fact finding enquiry because she was not associated with such enquiry. While approving the view taken by the High Court, the Supreme Court laid down the following preposition:

> 1) "An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose, the person against whom an enquiry is held must be

informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudiced an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

2) "It is true that some preliminary enquiry was made by Dr. S.Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

In **Sayeedur Rahman's** case, the Supreme Court considered the question whether President of the Board of Secondary Education could review and withdraw the monetary benefits paid to the appellant as a sequel to his reinstatement in the service of the school and held that such a decision could not have been taken without hearing the

appellant. The preposition laid down in that case reads as under:

> "……This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

In last three decades, the ambit and scope of the rule of hearing has been further extended by the Courts and it has been repeatedly held that opportunity of hearing given to the person likely to be affected by the action of the public authority must be effective, real and substantial and the Court will not accept mere pretence or show of compliance with the rule of audi alteram partem. It has been further held that when a notice is given to a person proposing to take action against him on the basis of some material collected at his back, then such material should be made available to him before the same is used for passing adverse order. If the proposed action is founded on some report prepared at the back of the person concerned, then a copy of such report should be made available to him and opportunity be given to him to explain his position. This proposition finds support from the judgments of the Supreme Court in **Management of the Northern Railway Co Operative Credit Society Limited, Jodhpur v. Industrial Tribunal, Rajasthan**[7], **Mazharul Islam Hashmi v. State of U.P**[8], **State Bank of India v. D.C. Aggarwal**[9], **M.A. Jackson v.**

Collector of Customs[10], **Benny T.D. v. Registrar of Cooperative Societies**[11], **Election Commission of India v. Manmohan Singh**[12] and **Sonu Builders v. Union of India**[13] .

I have prefaced disposal of the above noted writ petition by making a brief reference to the contours of the rule of audi alteram partem because after perusing the record of the case and hearing learned counsel for the parties, I am convinced that orders dated 18-11-1989 and

5-2-1994 passed by the District Registrar and Commissioner, Survey, Settlement and Land Records, Andhra Pradesh respectively, the legality of which has been questioned by the petitioner are liable to be quashed on the ground of violation of the rules of natural justice because before making a re-determination of the value of the property purchased by the petitioner and requiring him to make good deficiency of the stamp duty and registration fee, the District Registrar and Collector acted in violation of the rules of natural justice and the appellate authority arbitrarily overlooked the plea taken by the petitioner that he had been denied effective opportunity of hearing.

The facts on which there is no dispute between the parties are that the petitioner purchased Ac.0.96 cents of land comprised in Survey No.340-A and 341-A situated in Rentachintala Village and Mandal, Guntur District from its original owner for a sum of Rs.45,000/- . He paid stamp duty by adopting the value of Rs.46,875/- per acre. Thus, on receipt of a complaint that the property had not been properly valued, the District Registrar got conducted an enquiry through the vigilance cell which submitted report with the finding that the land purchased by the petitioner was urban and not agricultural and it should have been priced at Rs.150/- per square yard for the purpose of payment of stamp duty. On receipt of the report, the District Registrar

issued notice under Section 41-A of the Indian Stamp Act as amended by Andhra Pradesh Amendment Act No.17 of 1986 and called upon the petitioner to show cause why he be not called upon to pay the balance stamp duty amount of Rs.72,718/- and registration fee of Rs.3,735/-. The petitioner filed reply to contest the notice. He pleaded that stamp duty had been paid after correctly valuing the property. After considering the petitioner's reply, the District Registrar passed order dated 18-11-1989 whereby he confirmed the proposed revision of the value of the property and directed him to pay Rs.74,982/- towards the balance stamp duty and registration fee. The appeal preferred by the petitioner was dismissed by Commissioner, Survey, Settlement and Land Records vide his order dated 05-02-1994.

The petitioner has challenged the impugned orders on several grounds including the one that the order of the District Registrar is vitiated due to violation of the rules of natural justice. He has averred that even though the District Registrar had initiated action for re-determination of value of the property on the basis of report prepared by District Vigilance and Enforcement Officer, copy thereof was not supplied to him and he was not given opportunity to adduce evidence to controvert the findings and conclusions recorded in the report. Another plea taken by the petitioner is that even though it was specifically urged before the appellate authority that the order of the District Registrar is violative of the rules of natural justice, the officer concerned rejected this point without assigning cogent reasons.

In the counter affidavit filed by Sri K. Samba Murthy, District Registrar, Narsaraopet, it has been averred that action for re-determination of the value of the property was taken after giving sufficient opportunity of hearing to the petitioner. According to the respondents, the petitioner was represented before the District Registrar through an Advocate and, therefore, he is not entitled to contend that order dated 18-11-1989 was passed without giving

him opportunity of hearing.

I have heard learned counsel for the petitioner and the learned Government Pleader for Revenue and convinced that the order passed by the District Registrar requiring the petitioner to deposit Rs.74,982/- representing balance of the stamp duty and registration fee as also the appellate order passed by the Commissioner, Survey, Settlements & Land Records are liable to be annulled on the ground of violation of rules of natural justice. Undisputedly, notice dated 27-6-1989 issued by the District Registrar was based on the report prepared by the District Vigilance and Enforcement Officer. It is also not in dispute that copy of that report was not supplied to the petitioner. Indeed, it is not even the case of the respondents that the District Vigilance and Enforcement Officer had conducted enquiry after giving notice to the petitioner with an indication that it was proposed to revise the value of land purchased by him by changing its categorisation. If copy of the report had been supplied to the petitioner, he could have requested the District Registrar to give him an opportunity to adduce evidence to show that the land was agricultural and not urban and that the valuation done by him at the time of purchase was correct. He could have also lezd evidence to show that actual value of the property is less than Rs.150/- per square yard. All this could not be done by the petitioner because he did not get copy of the report prepared by the District Vigilance and Enforcement Officer. It is, therefore, reasonable to hold that the petitioner's cause had been seriously prejudiced on account of non-supply of copy of the report which constituted the basis of action initiated by the District Registrar. As a corollary, it must be held that the petitioner had not been given effective opportunity to controvert the proposed revision of the valuation of property.

Insofar as order dated 05-02-1994 is concerned, I find that the appellate authority did advert to the petitioner's plea of violation of the

rules of natural justice but brushed aside the same by observing that a notice had been served on the appellant on 27-6-1989 and arguments of his advocate were heard by the District Registrar and as such he is not entitled to complain of the violation of rule of audi alteram partem. In my opinion, the reason assigned by the appellate authority for rejecting the petitioner's plea of violation of natural justice by the District Registrar is legally untenable. What the appellate authority was required to consider was whether or not copy of the report prepared by District Vigilance and Enforcement Officer was made available to the petitioner and whether he was given opportunity to controvert the finding recorded therein. Unfortunately, the appellate authority misdirected itself and presumed that rules of natural justice will be deemed to have been complied with because the petitioner had been noticed and he was represented by an advocate.

As a sequel to the above discussion, I hold that the orders under challenge are vitiated due to violation of rules of natural justice and are liable to be set aside on that ground.

In the result, the writ petition is allowed. Orders dated 18-11-1989 and 5-2-1994 passed by District Registrar, Narsaraopet and Commissioner, Survey, Settlements & Land Records, Andhra Pradesh, Hyderabad respectively, are quashed. However, it is made clear that this order of the Court shall not preclude the competent authority from issuing fresh notice to the petitioner under Section 41-A of the Indian Stamp Act and pass appropriate order in accordance with law after supplying him the copy of the report prepared by the vigilance wing of the department and giving an opportunity to controvert the findings and conclusions recorded in the report.

Since the matter has remained pending before this Court for almost one decade, it is expected that the concerned officer will pass appropriate order within a maximum period of four months from the date of receipt of copy of this order.

G.S. SINGHVI, C.J.

21st June, 2006.

ARS/ks

Note: LR copy be marked.
(BO)
svs
P.S. to HCJ

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[1] **AIR 1967 SC 1269**
[2] **AIR 1973 SC 239**
[3] **AIR 1978 SC 597**
[4] **AIR 1981 SC 136**
[5] **AIR 1981 SC 818**
[6] **AIR 1986 SC 180**
[7] AIR 1967 SC 1182
[8] (1979) 4 SCC 537
[9] (1993) 1 SCC 13
[10] (1998) 1 SCC 198
[11] (1998) 5 SCC 269
[12] AIR 2000 SC 231
[13] (2001) 01 SCC 280